In the Supreme Court
OF THE
United States

OCTOBER TERM, 1976

No. 76-1817

STOCKTON DOOR CO., INC.,
Appellant,

vs.

NATIONAL LABOR RELATIONS BOARD,
Appellee.

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Pursuant to Rule 15, Supreme Court Rules, this jurisdictional statement is presented to obtain docketing of the above entitled case.

I

OPINIONS BELOW

Reference is made to the Opinion of the United States Court of Appeals for the Ninth Circuit attached hereto, made a part hereof, and marked Appendix 2.

II

NATURE OF PROCEEDING BELOW

The proceeding below resulted from the application of the National Labor Relations Board, Appellee herein, for enforcement of an order issued by said Board against Stockton Door Co., Inc., Appellant herein; said application was granted in the Court of Appeals requiring Stockton Door Co., Inc. to cease and desist from:

a) Supporting a labor union, to wit, General Teamsters, Local No. 439;

b) Requiring its employees to become members or pay dues to said local union;

c) Withholding recognition from Delta Yosemite District Council, United Brotherhood of Carpenters, and from refusing to bargain with that union regarding wages, hours, etc.;

d) Interfering with its employees in exercising rights guaranteed by Section 7 of the National Labor Relations Act; and to:

e) Withdraw recognition of Teamsters Local No. 439 in regard to its Salida, California, plant;

f) Reimburse its employees for funds paid to Teamsters Local No. 439;

g) Make employees whole from loss of wages, vacation or other benefits resulting from unfair labor practices.

III

STATUTORY AUTHORIZATION

The statute under which this proceeding is brought is United States Code Title 28, Subsection 1254 (1).

IV

JUDGMENT SOUGHT TO BE REVIEWED

The date of the opinion in the court below was December 23, 1976, and judgment was entered on March 31, 1977. Notice of Appeal was filed in the court below on February 22, 1977, a copy of which is attached hereto, made a part hereof, and marked Appendix 3.

V

JURISDICTION

This court has statutory jurisdiction of this appeal under Unitied States Code Title 28, Subsection 1254 (1).

VI

CASES SUSTAINING THE JURISDICTION OF THIS COURT

Textile Workers Union of America v. Darlington Manufacturing Co. (S.C. 1965) 85 S.Ct. 994, 380, U.S. 263, 13 L.Ed.2d 827;

John Wiley and Sons v. Livingston (New York 1964) 84 S.Ct. 909, 376 U.S. 543, 11 L.Ed.2d 898;

Local 174, Teamsters, Chauffers, Warehousemen and Helpers of America v. Lucas Flour Company (Wash. 1962) 82 S.Ct. 571, 369 U.S. 95, 7 L.Ed.2d 593;

Office Employees International Union Local 11, A.F. of L.-C.I.O. v. N.L.R.B. (App. D.C. 1957) 77 S.Ct. 799, 353 U.S. 313, 1 L.Ed.2d 846.

VII

QUESTIONS PRESENTED ON APPEAL

1. Whether substantial evidence on the record as a whole supports the Board's finding that the Appellant violated Section 8 (a) (5) and (1) of the National Labor Relations Act, as Amended, when for purely economic reasons Appellant closed down the operation of a non-viable, defunct subsidiary corporation under contract with Carpenters Union, terminated all employees of said subsidiary corporation, but subsequently reactivated the physical premises formerly occupied by said subsidiary corporation, augmented the equipment therein with tooling from another plant of said Appellant parent corporation, and thereafter utilized the premises as an integrated facility of said parent corporation to service a market heretofore serviced by parent corporation only.

2. Whether substantial evidence on the record as a whole supports a finding that the Appellant violated Section 8 (a) (3), (2) and (1) of the National Labor Relations Act, as Amended, by including the employ-

ees of the integrated facility in a Company—rather than reactivate the defunct Carpenters bargaining unit, where the newly integrated facility was staffed by employees of the existing Teamster unit and former employees of the defunct Carpenters unit.

3. Whether the National Labor Relations Board under the provisions of the National Labor Relations Act, as Amended, has the power to order an Employer to siphon off work from a company-wide bargaining unit (Teamster) which had historically performed said work and to reactivate an otherwise defunct bargaining unit (Carpenters), and assign that work to the Carpenters unit because the physical premises in which the work was not to be performed had formerly been occupied by the Carpenters unit.

VIII

STATEMENT OF FACTS

1. Appellant, Stockton Door, is a sizable manufacturer of doors and pre-hung doors, both fully assembled and in knock-down kits. Appellant's products were manufactured at three locations in Stockton, California, in standard sizes on a production basis and sold exclusively at wholesale.

2. Valley Millwork and Supply Company, a very small operation, was an independent corporation engaged at Salida, California, twenty miles from Stockton, in the custom assembly of pre-hung doors sold exclusively at retail. Stockton Door was the principal supplied to Valley of the major components

of its assemblies. In March of 1973 Valley had become insolvent, and, as a result of a composition of creditors, the entire stock interest in Valley was acquired by Stockton Door, its principal creditor.

3. Teamsters have been the certified bargaining representative of Stockton Door employees since April of 1969. The contract in effect at all times herein existed from May, 1972 to May, 1975 and from year to year thereafter, absent timely notice, and contains a provision that it covered additional plants opened. Valley on the other hand, had a contract with Carpenters existing from December, 1971 to June, 1974, renewable yearly, absent timely notice.

4. After an effort of approximately one year to operate on a profitable basis, the operation, which had demonstrated a sizable loss, was closed down; the customers thereof advised to seek a new source of supply; the Carpenters Union notified, and all employees terminated; dismantling of the Salida facility commenced.

5. At the time of the closure of the Valley Salida plant Stockton Door was operating three facilities in the Stockton area, two of which were company owned and the third rented. It was to this third facility to which the dismantled Salida machinery was to be moved. Before the moving of machinery it was ascertained that it would be more economical to abandon this third plant and use the physical premises formerly occupied by Valley in Salida, in lieu thereof, as the Salida premises could be purchased for a smaller sum than the third Stockton Facility would cost in

rent and improvements. Some of the equipment of this third plant went to the other two plants in Stockton, some to Salida. Appellant then quit this third facility.

The Salida facility was thereafter utilized for operations which had theretofore been exclusively performed by members of the Teamsters bargaining unit in Appellant's three Stockton plants. Salida was staffed by employees of the Stockton plants and new hires, some of whom had formerly been employed by Valley. Appellant recognized the Teamsters as the bargaining agent for this operation as a continuation and extension of its Stockton operation.

Carpenters demanded recognition as bargaining agent for this operation; and when recognition was denied, filed unfair labor practice charges with the 20th Region of the N.L.R.B. charging, inter alia, unlawful recognition of Teamsters and unlawful refusal to bargain by Appellant.

After extensive hearings the Administrative Law Judge for N.L.R.B. before whom the case was heard, found the aforementioned charges to be unfounded (Appendix 1); that the changes in the Salia operation entirely motivated by legitimate economic reasons and rejected to ascertain that said changes were made to substitute the Teamsters for the Carpenters as the bargaining unit. Upon exceptions filed by the Board's General Counsel the Administrative Law Judge's findings were reversed and the Ninth Court of Appeals held the Board's orders issued to remedy the unfair labor practice charges be enforced.

IX

REASONS WHY SUPREME COURT SHOULD GRANT CERTIORARI

The power of the National Labor Relations Board to interfere in the business operations of an employer, as in this case, to compel the reactivation of a defunct bargaining unit in order to utilize certain physical premises of a wholly owned subsidiary which had been abandoned, is subject to strict limitation; for it is not within the ordinary scope of the Board's authority to tell an employer how to run his business.

The question has been considered in a number of cases in which the Board in order to effectuate the purposes of the Act, has deemed it desirable to continue a certain business operation or department which employer desires to abandon.

In these cases it has been uniformly held that the Board is without power to interfere with management where the discontinuance of a part of the business is prompted by bona fide and legitimate business purposes, and, is not intended to frustrate the purposes of the Act, or interfere with the employees' rights conferred in the Act.

5th Circuit:

N.L.R.B. v. Houston Chroncile Publishing Co., 211 F.2d 848, 851;

6th Circuit:

N.L.R.B. v. R. C. Mahon Co., 269 F.2d 44;

8th Circuit:

N.L.R.B. v. Preston Feed Corporation, 309 F. 2d 346;

N.L.R.B. v. Missouri Transit Co., 250 F.2d 261, 264;

Williams Motor Co. v. N.L.R.B., 128 F.2d 960, 964;

N.L.R.B. v. Cape County Milling Co., 140 F.2d 543;

10th Circuit:

N.L.R.B. v. Brown-Dunkin Co., 287 F.2d 17, 19;

Accord:

N.L.R.B. v. Jones & Laughlin, 301 U.S. 1, 43, 45, 57 S.Ct. 615, 81 L.Ed. 893.

In the instant case, the decision of the Appellant to close its subsidiary corporation Valley and abandon its custom retail trade was based on economic reasons and neither the Administrative Law Judge nor the National Labor Relations Board found otherwise. The bona fides of the Appellant were never in issue.

Yet the Board, in overruling the Administrative Law Judge, has ordered the employer to continue the Valley bargaining unit, which the employer had abandoned, and the Teamsters to relinquish its jurisdiction over a class of work it had historically performed; and lastly ordered assignment of work to the Carpenters.

In decreeing enforcement of the Board's Order, the Ninth Circuit is in opposition to the weight of authority of not only the Fifth, Sixth, Eight and Tenth Circuit Courts of Appeal but to the rule of this Court itself in Jones & Laughlin, supra.

X

Attached herto and made a part hereof is the Order of the National Labor Relations Board containing its Findings of Fact and Conclusions of Law, marked Appendix 1.

XI

Notice of Appeal filed in the Court below is attached hereto, and made a part hereof and marked Appendix 3.

Dated: June 20, 1977.

Respectfully submited,

JAMES C. VAN DYKE,

JAMES B. ATKINSON,

Attorneys for Appellant

Stockton Door Co., Inc.

(Appendices Follow)

APPENDICES

United States of America
Before the National Labor Relations Board

Stockton Door Co., Inc. and Delta-Yosemite District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL-CIO	Cases 20-CA-9529 and 20-CA-9533
General Teamsters Local No. 439, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America and Delta-Yosemite District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL-CIO	Case 20-CB-3274

DECISION AND ORDER

On March 5, 1975, Administrative Law Judge Martin S. Bennett issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and the Charging Party adopted the exceptions and brief of the General Counsel.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The General Counsel and the Charging Party in their exceptions to the Administrative Law Judge's Decision contend that Stockton Door Company violated Section 8(a)(1), (2), (3), and (5) of the Act by withdrawing recognition from the Delta-Yosemite District Council of Carpenters and by repudiating the collective-bargaining agreement; thereafter reducing wages and stopping payments to the Union's trust fund, recognizing General Teamsters Local No. 439 as the representative of the employees in the unit represented by the Carpenters, and entering into and maintaining an agreement with the Teamsters requiring employees in the unit to become members of the Teamsters. They further contend that General Teamsters Local No. 439 violated Section 8(b)(2) and (1)(A) of the Act by accepting recognition and entering into and maintaining an agreement requiring the employees in the unit to become members of the Teamsters. The Administrative Law Judge found violations only in Stockton's payment, and the Teamsters acceptance, of initiation fees for employees in the unit.

Until March 1973, Valley Millwork and Supply Company was an independent corporation manufacturing prehung doors at Salida, California. The prehung doors were retailed to contractors and individual customers. In March 1973, Valley was acquired by Stockton Door Company, Stockton, California, previously Valley's largest supplier of blank doors.

All the stock of Stockton Door Company is owned by Stockton's president, Guy, and his wife, who is also secretary-treasurer of the corporation. Along with Stockton's vice president, they also are its board of directors. Following the takeover of Valley, Stockton's officers and directors assumed the same positions with Valley.

Valley's business remained the same after the takeover, although Stockton, primarily a manufacturer and wholesaler of blank doors, became the sole supplier of doors. The same employees performed the same jobs on the same machines under the same immediate supervision. Cecil Simpson, former president of Valley, and Patterson, former vice president, respectively became manager and shop superintendent. However, Stockton employees were occasionally detailed to Valley to work on the building and to do some production work.

Stockton closed the Valley plant March 15, 1974, allegedly because the financial difficulties that had led to Stockton's takeover of Valley could not be resolved. On March 21, Guy, as president of Stockton, notified the Carpenters that Valley had gone out of business and that ". . . as we are no longer operating Valley

Millwork, Inc., there is no reason to renegotiate a new contract." The contract then in effect ran until June 30, 1974.

On March 25, 1974, the Valley plant was reopened as part of Stockton Door Company, William Patterson, former vice president of Valley and later, under Stockton, the shop superintendent, was hired as shop superintendent or foreman. Patterson, in turn, hired Tuggle and Tramel, former Valley employees, as the initial production force, although at lower wages. In September 1974, Darneille, the manager of Valley from November 1973 until it closed, was rehired to manage the Salida plant and to coordinate all purchases.

Using the same machines, in the same location, the former Valley employees performed essentially the same work as they had for Valley. However, the doors were no longer retailed prehung but were wholesaled as knocked-down units in boxes. The difference, according to Guy, is that the jambs are not nailed together in knocked-down units. At least some knocked-down and boxed doors were sold by Valley before March 15, 1974.

In late April 1974, Stockton Door recognized General Teamsters Local No. 439 as the representative of its employees at Salida and applied its agreement with the Teamsters, including a union-security clause, to the Salida facility. The Administrative Law Judge found, and we agree, that both Stockton and the Teamsters violated the Act by the Company's payment of initiation fees to the Teamsters. We do not, however,

agree that the Respondents did not otherwise violate the Act.

The Administrative Law Judge found that Valley was closed for legitimate economic reasons and that Stockton originally intended to move Valley's equipment to another plant in Stockton. However, after closing the plant and beginning the move, the Company determined that it would be better to use the Salida facility as another integral Stockton Door plant.

When the Salida plant was reopened it was not, in the Administrative Law Judge's opinion, as a continuation of Valley Millwork, but as part of the much larger Stockton Door wholesale entity and was an accretion to the existing unit. In his view that conclusion was supported by the change in merchandising from retail to wholesale and the fact that sales to Valley's customers were not continued. The Administrative Law Judge based his conclusion that the Salida facility was integrated into Stockton Door after it reopened on the detail of employees from Stockton to work at Salida; the fact that Darneille, the manager at Salida, coordinated all of Stockton Door's material purchases; and the fact that there was a centralized labor relations policy. In sum, he found that for legitimate economic reasons the identity of Valley had been erased and its former facility merged into Stockton Door.

In our view, however, in all but name the integration and merger of Valley and Stockton occurred long before the Salida facility reopened under the Stockton

name, and there was no meaningful change in the operation of the plant after the Valley identification was abandoned. That Stockton operates as a wholesaler is a detail in the mode of distribution that has had little or no effect on the work of the employees in the production and maintenance unit. Employees no longer nail jambs together, but that can hardly be considered material. These changes do not warrant withdrawal of recognition from the incumbent collective-bargaining representative.

After its takeover of Valley Millwork, Stockton Door went from being the major to being the only supplier of blank doors to Valley, and Stockton employees were detailed temporarily to the Valley plant when it was thought expedient. The officers and directors of the two Companies were identical and Stockton and Valley President Guy controlled the labor relations of both firms. Guy took an active part in the day-to-day management, on occasion directing, disciplining, hiring, and firing Valley employees. Valley was a wholly owned subordinate instrumentality of Stockton Door, whose activities as Guy specifically testified, were directed by Stockton. Thus, all the factors necessary to establish that two employers are actually one were satisfied: interrelation of operations, centralized control of labor relations, common management, and common ownership or financial control. *Sakrate of Northern California, Inc.,* 137 NLRB 1220 (1962).

As the *alter ego* or continuation of its predecessor, Stockton Door stands in its predecessor's shoes and has

the same bargaining obligation to the representative of its employees. Its predecessor, however, was not the business entity which recognized the Carpenters and entered into a collective-bargaining agreement with that Union. Rather it was that corporation under the Stockton Door ownership. Therefore, it is necessary to determine the obligations incurred by the new ownership.

When Stockton acquired Valley in March 1973 and continued to operate it without change in the same industry, with the same industry, with the same employees, it became Valley's successor. *N.L.R.B. v. Burns International Security Services, Inc.,* 406 U.S. 272 (1972). As Valley's successor, it was required to recognize and bargain with the incumbent collective-bargaining representative of the employees in the production and maintenance unit; a unit which is presumptively appropriate. It is not signfiicant in this context that the incumbent Union had never been certified as the collective-bargaining represenative of the employees in the unit. *Eklund's Sweden House Inn, Inc.,* 203 NLRB 413 (1973).

Following the change in ownership, the terms of Valley's contract with the Carpenters were adhered to by Stockton. Patterson advised the Carpenters after the takeover that there would be no changes and that Stockton would abide by the contract. At least until December 1973, Valley continued to make payments to the Carpenters trust funds. Guy handled grievances under the contract and his letter to the Carpenters announcing that it would be unneces-

sary to negotiate a new contract because Valley had gone out of business implies that the contract had been adopted by the new ownership. Darneille, Valley's manager from Novemmber 1973 until the plant was closed, testified it was under the Carpenters.

Stockton Door, as the new owner, was not required to assume its predecessor's contract; nonetheless, it did assume the contract, considered it binding, so advised the Carpenters, and gave the contract full force and effect until March 15, 1974, when Valley closed. Once Stockton by its actions assumed the contract, it was bound by it thereafter. *Eklund's Sweden House Inn. supra.*

It is clear that Valley and Stockton were a single-integrated employer and *alter egos* before the plant closed and reopened. Stockton operated Valley Millwork as a successor and assumed the existing collective-bargaining agreement with the Carpenters Union. The single-plant production and maintenance unit is presumptively appropriate, and it is not contended otherwise. Not only does the record affirmatively demonstrate that all members of the unit on March 15, 1974, when Valley closed, were members of the Carpenters, but it also shows that the Carpenters contract remained in effect until June 30, 1974, and therefore its majority may be presumed to have continued at all material times. Thus, Stockton Door was obligated to recognize and bargain with the Carpenters Union at all material times.

The Delta-Yosemite District Council of Carpenters was the lawful collective-bargaining representative

when the Salida plant was reopened as a continuation of the same employer and Stockton Door was bound by the contract it had assumed. It follows that Stockton Door violated Section 8(a)(5) by unilaterally reducing wages, stopping payments to the Carpenters trust funds, withdrawing recognition from the Carpenters, and repudiating their collective-bargaining agreement. Similarlly, Stockton Door violated Section 8(a)(2) of the Act, not only as found by the Administrative Law Judge, but also by recognizing General Teamsters Local No. 439 at the Salida plant, entering into a contract with that Union, and enforcing a union-security clause requiring membership in that Union. *Buschtes & Mercier Woodworking Co., Inc. and Rand & Co., Inc.,* 203 NLRB 123 (1973). Indeed, under our *Midwest Piping* doctrine Stockton's conduct would have violated Sectiion 8(a)(2) even were we to have found that Stockton Door and Valley Millwork were not *alter egos. Midwest Piping and Supply Co., Inc.,* 63 NLRB 1060 (1945). Stockton's agreement to the union-security clause, and its maintenance, also violated Section 8(a)(3) of the Act.

By accepting recognition and entering into and maintaining a contract containing a union-security clause when it did not represent a majority of the employees, General Teamsters Local No. 439 violated Section 8(b)(2) and (1)(A) of the Act.

Amended Conclusions of Law

Delete the Administrative Law Judge's Conclusions of Law 4 through 6 and add the following:

"4. All production and maintenance employees employed by the Employer at the former Valley Millwork and Supply Company facility, Salida, California, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

"5. At all times relevant the Delta-Yosemite District Council of Carpenters has been the representative of the employees in the appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

"6. By unilaterally reducing wages, stopping payments to the Carpenters trust fund, withdrawing recognition from the Carpenters, and repudiating the collective-bargaining agreement, the Respondent Employer violated Section 8(a)(5) and (1) of the Act.

"7. By recognizing General Teamsters Local No. 439 as the collective-bargaining representative of its employees at Salida, entering into and maintaining an agreement requiring employees to become members of the Teamsters when the Teamsters did not represent a majority of the employees in the appropriate unit, the Respondent violated Section 8(a)(2) and (1) of the Act.

"8. By entering into and maintaining an agreement with General Teamsters Local No. 439 requiring employment in the Teamsters as a condition of employment when the Teamsters did not represent a majority of the employees in the appropriate unit, the Respondent Employer violated Section 8(a)(3) and (1) of the Act.

"9. By accepting the payment of initiation fees from an employer, General Teamsters Local No. 439 violated Section 8(b)(1)(A) of the Act, and violated Section 8(b)(2) and (1)(A) of the Act by accepting recognition from the Respondent Employer and by entering into and maintaining an agreement requiring membership in the Teamsters as a condition of employment when it did not represent a majority of employees in the appropriate unit.

"10. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

"11. The Respondents have not otherwise engaged in unfair labor practices within the meaning of the Act."

Remedy

Having found that the Respondents have engaged in certain unfair labor practices in violation of Section 8(a)(1), (2), (3) and (5), and 8(b)(2) and (1)(A) of the Act, we shall order them to cease and desist therefrom and to take certain affirmative action designed to effectuate the purposes of the Act.

Respondent Employer's violation of Section 8(a)(2) and (3) of the Act require an order that it withdraw and withhold recognition from General Teamsters Local No. 439 as representative of its employees in the unit found appropriate unless and until such time as Local No. 439 is certified by the National Labor Relations Board, and cease giving effect to the agreement entered into with that Union. Similarly the Respondent Union's violations of Section 8(b)(1)(a)

and 8(b)(2) require an order that it cease applying the collective-bargaining agreement to the employees in the unit found appropriate herein at the Salida plant, accepting recognition as the representative of the employees in that unit, or entering into and maintaining an agreement with the Respondent Employer requiring membership in the Teamsters, or the payment of initiation fees, dues, or other moneys, by the employees in said unit, until and unless it is certified by the National Labor Relations Board as the collective-bargaining representative of the employees in that unit. Further, the Respondents will be ordered, jointly and severally, to reimburse any current or former employee, for any initiation fees, dues, or other moneys, paid by said employees to the Respondent Union as result of the aforesaid unfair labor practices, with interest at 6 percent per annum.

The Respondent Employer's violation of Section 8(a)(5) require an order that it recognize and bargain with Delta-Yosemite District Council of Carpenters and, if an understanding is reached, embody it in a signed agreement; cease making unilateral changes in wages, hours, or other terms and conditions of employment; and make the employees whole for any loss of wages, vacation pay, or other benefits arising from its agreement with the Carpenters, as a result of its unilateral actions in violation of Sections 8(a)(5) of the Act. The Respondent Employer will also be ordered to make payments to the Carpenters trust funds for the period after the Salida plant was reopened. Payments to the employees shall be made in accordance with *Isis Plumbing & Heating Co.*, 138

NLRB 716 (1962), and *F. W. Woolworth Company*, 90 NLRB 289 (1950).

Since the violations denying the employee the right to select their own collective-bargaining representative go to the heart of the Act, we shall issue a broad rather than a narrow order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

A. Respondent Stockton Door Co., Inc., Stockton, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Contributing assistance or support to General Teamsters Local No. 439, International Brotherhood of Teamsters, Chauffuers, Warehousemen & Helpers of America, or any other labor organization.

(b) Requiring membership in, or the payment of initiation fees, dues, or other money to, Local 439, or any other Labor organization, except as permitted in Section 8(a)(3) of the Act.

(c) Withholding recognition from Delta-Yosemite District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the unit appropriate herein at its Salida plant; refusing to bargain with that Union as the representative of the employees in that unit; and

making unilateral changes in wages, hours, or other terms and conditions of employment.

(d) In any manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Withdraw and withhold recognition from General Teamsters Local No. 439, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, as the representative of, and cease applying its collective-bargaining agreement with that Union to, the employees in the unit found appropriate herein at its Salida plant unless and until Local 439 is certified by the National Labor Relations Board as the representative of the employees in that unit.

(b) Jointly and severally with Local 439 reimburse its current and former employees for any initiation fees, dues, or other money, they may have paid to General Teamsters Local No. 439, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, as a result of the unfair labor practices found herein, with interest at the rate of 6 percent per annum.

(c) Make its employees whole for any loss of wages, vacation pay, or other benefits incurred as result of its unfair labor practices in the manner set forth in the section herein entitled "Remedy."

(d) Make payments to the Delta-Yosemite District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, trust funds for the period after the Salida plant was reopened.

(e) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay, or other money due, under the term of this Order.

(f) Upon request, recognize and bargain with Delta-Yosemite District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, as the exclusive collective-bargaining representative of all production and maintenance employees employed by the Respondent Employer at the former Valley Millwork and Supply Company facility, Salida, California, respecting rates of pay, wages, hours, or other terms and conditions of employment and, if an understanding is reached, embody it, upon request, in a signed agreement.

(g) Post at its plant in Salida, California, copies of the attached notice marked "Appendix A."[1] Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by the Respondent Employer's authorized representative,

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[1]In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

shall be posted immediately by it upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily placed. Reasonable steps shall be taken by the Respondent Employer to insure that said notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps the Respondent Employer has taken to comply herewith.

B. Respondent General Teamsters Local No. 439, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Accepting assistance or support from Stockton Door Company, Inc., or any other employer.

(b) Applying its agreement with Stockton Door Company, Inc., to that Employer's production and maintenance employees at the former Valley Millwork and Supply Company facility, Salida, California, unless and until it is certified as the representative of those employees by the National Labor Relations Board.

(c) Requiring membership in the Teamsters as a condition of employment, or this payment of initiation fees, dues, or other money, except as permitted by Section 8(b)(2) and the proviso to Section 8(a)(3) of the Act.

(d) In any manner restraining or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Jointly and severally with the Respondent Employer reimburse current and former employees of the Respondent Employer for any initiation fees, dues, or other money they paid to the Respondent Union as a result of the unfair labor practices found herein, with interest at the rate of 6 percent per annum.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all membership, financial, or other records necessary or appropriate to analysis the amounts due under the terms of this Order.

(c) Post at the Respondent Union's business offices and meeting hall copies of the attached notice marked "Appendix B."[2] Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by the Respondent Union's authorized representative, shall be posted by the Respondent Union immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to insure that said notices are not altered, defaced, or covered by any other material.

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[2]See fn. 1, *supra*.

(d) Notify the Regional Director for Region 20, in writing, within 20 days of the date of this Order, what steps the Respondent Union has taken to comply herewith.

Dated, Washington, D.C., June 30, 1975

John H. Fanning, Member
Ralph E. Kennedy, Member
John A. Penello, Member
National Labor Relations Board

Appendix A

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT assist or support General Teamsters Local No. 439, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, or any other labor organization.

WE WILL NOT require membership in, or the payment of initiation fees, dues, or other money to, Local 439, or any other labor organizaiton, except as permitted in Section 8(a)(3) of the National Labor Relations Act.

WE WILL NOT withhold recognition from the Delta-Yosemite District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, as the exclusive collective-bargaining representative of our production and maintenance employees employed at our Salida, California, plant; refuse to bargain with the Carpenters Union as representative of that unit; or make unilateral changes in wages, hours, or other terms and conditions of employment of the employees in that unit.

WE WILL NOT in any manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed in Section 7 of the Act.

WE WILL withdraw and withhold recognition from General Teamsters Local No. 439, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, as the representative of our production and maintenance employees at our Salida, California, plant and WE WILL NOT apply our collective-bargaining agreement with Local 439 to those employees unless and until Local 439 is certified as their representative by the National Labor Relations Board.

WE WILL, jointly and severally with Local 439, reimburse our current and former employees at the Salida, California, plant for any initiation fees, dues, or other money they may have paid to Local 439 as a result of the unfair labor practices we have been found to have committed, with interest at the rate of 6 percent per annum.

WE WILL make our employees in the production and maintenance unit at our Salida, California, plant whole for any loss of wages, vacation pay, or other benefits, incurred as a result of the unfair labor practices we have been found to have committed herein, with interest at the rate of 6 percent per annum.

WE WILL make payments to the Delta-Yosemite District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, trust funds for the period after we reopened our Salida, California, plant.

WE WILL, upon request, recognize and bargain with the Delta-Yosemite District Council of Carpenters & Joiners of America, AFL-CIO, as the exclusive

collective-bargaining representative of all our production and maintenance employees employed at our Salida, California, plant, respecting wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody it, upon request, in a signed agreement.

Stockton Door Co., Inc.
(Employer)

Dated ..... By .....
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 13018 Federal Building, Box 36047, 450 Golden Gate Avenue, San Francisco, California 94102, Telephone 415-556-3197.

Appendix B

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT accept assistance or support from Stockton Door Co., Inc., or any other employer.

WE WILL NOT apply our agreement with Stockton Door Co., Inc., to that Employer's production and maintenance employees at its Salida, California, plant unless and until we are certified as their representative by the National Labor Relations Board.

WE WILL NOT require membership in the Teamsters as a condition of employment, or the payment of initiation fees, dues, or other money, except as permitted by Section 8(b)(2) and the proviso to Section 8(a)(3) of the Act.

WE WILL NOT in any manner restrain or coerce employees in the exercise of rights guaranteed by Sections 7 of the Act.

WE WILL, jointly and severally with Stockton Door C., Inc., reimburse current and former employees of that Employer for any initiation fees, dues, or other money, paid to us as a result of the unfair labor

practices we have been found to have committed, with interest at the rate of 6 percent per annum.

General Teamsters Local No. 439, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 13018 Federal Building, Box 36047, 450 Golden Gate Avenue, San Francisco, California 94102, Telephone 415-556-3197.

JD-(SF)-0-75
Stockton, Calif.

United States of America
Before the National Labor Relations Board
Division of Judges
Branch Office
San Francisco, Calif.

Stockton Door Co., Inc. and Delta-Yosemite District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL-CIO	Case No. 20-CA-9259
Stockton Door Co., Inc. and Delta-Yosemite District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL-CIO	Case No. 20-CA-9533
General Teamsters Local No. 439, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America and Delta-Yosemite District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL-CIO	Case No. 20-CB-3274

Jonathan J. Seagle, Esq., for the General Counsel.

Michael P. Roger, Esq., of San Francisco, Calif. and *Clinton Hoellworth* of Ceres, Calif., for the Charging Party.

James B. Atkinson, Esq., of Stockton, Calif. for Respondent-Employer.

Hamilton Briggs, of Stockton, Calif., for Respondent Union.

DECISION

Statement of the Case

MARTIN S. BENNETT, Administrative Law Judge: This matter was heard at Stockton, California on November 21 and 22, 1974. The original complaint, issued August 16 against Stockton Door Co., Inc., herein Stockton, was based upon charges filed June 6 and July 5, 1974 by Delta-Yosemite District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, herein Carpenters. An amended complaint involving the same parties was issued on October 23, 1974.

A consolidated complaint against Stockton and General Teamsters Local No. 439, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, herein Teamsters, based upon charges filed by Carpenters on September 5, issued on October 23, 1974. In essence, the complaints encompass alleged violations of Section 8(a)(1), (2), (3) and (5) on the part of Stockton and Section

8(b)(2) and (1)(A) on the part of Teamsters. Briefs have been submitted by the General Counsel and Respondent Stockton.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

Findings of Fact

I. Jurisdictional Findings

Stockton is a California corporation which maintains its main office and facilities at Stockton, California plus a facility in Salida, California, same 22 miles distant, according to the map, where it is engaged in the manufacture of doors. Stockton annually sells and ships products valued in excess of $50,000 directly to customers located outside the State of California. I find that the operations of Respondent Stockton affect commerce within the meaning of Section 2(6) and (7) of the Act.

II. The Labor Organizations Involved

Carpenters and Teamsters are labor organizations within the meaning of Section 2(5) of the Act.

III. The Alleged Unfair Labor Practices

A. *Introduction*

The primary issue herein is whether Stockton is guilty of a refusal to bargain with Carpenters at its Salida facility. Stockton was incorporated in June of 1967 and manufactures flush doors at two locations in Stockton. Almost all of its products are shipped out of state to wholesale jobbers. It has never sold directly to contractors or individuals, identified

herein as the retail trade. At the time material herein, it also had vacant space in a third facility in downtown Stockton, treated below, where it anticipated expanding its manufacturing operation; this is identified herein as the former International Harvester plant.

Valley Millwork and Supply Company, herein Valley, incorporated in January of 1972, and later acquired by Stockton, was engaged at Salida in the pre-hanging of doors: it purchased the greater part of its doors from Stockton, pre-hung same and sold them to retail contractors or individuals. Stockton and Valley did not, and have not ever, sold to the same customers, or rather, to the same market.[1]

President Andy Guy of Stockton testified, and I find, that Valley, then otherwise owned, was in financial difficulties in 1973 with a number of creditors, including Stockton, its largest. A creditors' meeting was called by Cecil Simpson, the founder of Valley. As Guy uncontrovertedly testified, and I so find, it was agreed that Stockton would purchase all the stock of Valley for $300. The record reflects that all creditors, save one, agreed to a settlement of 25 cents on the dollar for monies owed them by Valley, to be paid by Stockton, and this was duly done. Stockton and Valley, in essence, had the same officials for the year between March of 1973 and 1974.

Stockton continued to operate Valley in unchanged manner until March of 1974. In an effort to improve Valley's deteriorated financial condition, Guy hired

[1]As appears below, Stockton owned and operated Valley between March 15, 1973 and March 15, 1974.

one, Lorrin Darneille, to manage Valley as of November 1973 In February of 1974, Darneille reported to Guy that the business simply could not be operated in a profitable manner and recommended shutting it down; he left Valley's employ about March 1, 1974. The previous owner, Cecil Simpson of Valley, but then a manager, gave similar opinion. By letter of March 13, accountants for Valley in essence confirmed the sorry financial condition of Valley and it was shut down on March 15, 1974.

At this point, it is in order to set forth the labor relations picture at these three entities which basically led to the instant dispute. Teamsters had been certified as the bargaining representative of Stockton's employees at Stockton since April of 1969. The most recent contract runs from May 31, 1972 through May 30, 1975, and from year to year thereafter, absent timely notice of revision or termination, and contains a union shop clause. It also provides that the contract is to apply to all plants opened in the future. Valley, on the other hand, has had a contract with Carpenters, executed December 2, 1971, covering its production and maintenance employees and expiring June 30, 1974, but renewable yearly, absent timely notice.

After Valley shut down on March 15, 1974, Guy wrote to Carpenters, advised it that Valley had gone out of business and that there was therefore no need to negotiate a new contract covering that operation. Clinton Hoellworth, executive secretary of Carpenters, spoke with Guy a few days later and Guy confirmed this, stating further that the employees of Valley had

been terminated. On April 1, Carpenters wrote to Guy at Stockton and contended that the contract was still in existence. The General Counsel contends that Stockton, was an *alter ego* of Valley, reopened this operation on March 25, 1974, and that there was an obligation to bargain with Carpenters. Respondent contends that Valley went out of business and now is a dormant corporation or a corporate shell retained for tax purposes.

Stockton, it may be noted, had approximately 60 employees in two plants in that city. After March 25, 1974, when the Salida plant indeed was reopened, there were but two or three employees permanently assigned to that location with other detailed from Stockton as needed. William Patterson, formerly vice president of Valley and now shop foreman or superintendent for Stockton at Salida, testified that Stockton personnel had previously been detailed to Salida during the 1973-74 year of Stockton's ownership of Valley which, as noted, was located at Salida some 22 miles from Stockton. At the most, during the past year, there were five rank-and-file personnel at the Salida facility.

In essence, the primary issue herein boils down to whether Stockton, after reopening the Salida plant, became an *alter ego* of Valley, as contended by the General Counsel,[2] or as I view it, an overall new employing entity with the Salida premises merged into the Stockton operation and the ensuing abandonment

[2]Who specifically contends that Stockton was not a successor. See footnote 14 of General Counsel's brief, stating that ". . . the purported new employer was merely a continuation of the existing business under another name."

of Valley's retail business. In view of the factors detailed below, including overall control of operations in every respect, it might logically follow also that the Salida facility, with the change in operations, was an accretion to the much larger existing Stockton bargaining unit. In my judgment, a preponderance of the evidence will not support the *alter ego* theory of the General Counsel, for reasons stated below.

Turning to recognition of Teamsters at Salida, Executive Assistant Hamilton Briggs of Teamsters testified that President Guy of Stockton called him during the last week of March stated that he contemplated starting an operation at Salida and asked if Briggs had any objections to the use of Stockton personnel there; Briggs voiced no objection except to point out that if this became a permanent operation the employees would have to transfer to the jurisdiction of another local of Teamsters.

During the first two weeks of April, Guy advised Briggs that Carpenters had raised the jurisdictional question as to the Salida operation. After April 15, employees at Salida joined Teamsters pursuant to its union security clause.

According to Guy, he agreed with the representatives of Teamsters that the contract would apply at Salida for an interim indefinite period not specified, this after Teamster personnel directed his attention to the clause in the contract with Stockton that it would apply to plants opened in the future. In essence, Stockton honored the Teamster contract thereafter at Salida and, at an appropriate date made,

payments to the Teamsters' health and welfare fund covering those employees.

B. *Change in the Salida Operation*

Stockton rented a third installation in that city of some 5,000 square feet intended to be devoted to the pre-hanging of doors and warehousing. According to the uncontroverted testimony of President Guy, after closing down Valley, it was the intention of Stockton to move Valley equipment to this installation and that equipment was partially dismantled. Respondent then discovered that it would take some ten to twenty thousand dollars to rewire the facilities at this third building; it also realized that the rent on the third building was $475 per month, whereas the Salida facility could be purchased with payments of approximately $350 per month.

Respondent decided, therefore, to abandon the transfer of equipment. Some of the equipment at this third plant went to the other two plants in Stockton, some to Salida and Respondent then released this third facility, Guy also testified that a pre-hung door machine, routers and miscellaneous machinery was sent to Salida. Plant Superintendent Robert Pittman of Stockton testified similarly as to the transfer of this equipment. Indeed, Pittman personally placed a piece of equipment on a truck destined for Salida and has since seen it in operation at that location.

The foregoing is supported by the testimony of William Patterson, shop superintendent of Stockton for Salida, and vice president of Valley prior to the

1973 takeover. He also was terminated on March 15, was called by Guy about one week later and was offered work at Stockton in that city. Guy explaining that Respondent was planning on moving some machinery to Salida. However, he was rehired to work at Salida some seven or eight days after the shutdown, because Guy concluded that the Stockton plant could not handle the volume of work.

He duly went to Salida as its first employee, save for Allen Simpson in the office, and devoted himself to reassembling the machinery which had been disassembled for the abortive move to the third plant in Stockton. Thereafter, Stockton at Salida rehired Joe Tuggle, Dale Tramel and a new hire David Simpson, who left on August 23 to return to school. Richard Tuggle was hired as a clean-up boy on April 30 and there were two additional hires in May and two in June.

Lorrin Darneille, an impressive witness, testified that he was rehired in September by Stockton to manage the Salida operation and did so, utilizing Foreman Patterson and basically five rank-and-file personnel, plus a part-time clean-up man. He was told that he was to coordinate the Salida and Stockton facilities as to purchases and he has thereafter, from Salida, handled the purchasing of all building materials for the Salida facility as well as the Stockton facilities.

C. *Concluding findings as to the alleged unfair labor practices*[3]

(1) Valley, insolvent, was acquired by Stockton as a result of a competition of creditors, with Stockton being the largest. After an effort for approximately one year to operate Valley, a retail buisiness, as contrasted with Stockton, a wholesaler, Stockton closed down the operation on March 15, 1974.

(2) Stockton thereafter in effect integrated the Salida operation into its Stockton operation. This is demonstrated by the fact that prior retail customers of Valley were advised to seek new sources of supply. It is also clear that Stockton never sold to the same customers either before or after the abandonment of the retail operation of Valley. The foregoing is corroborated by the testimony of Cecil Simpson, the founder of Valley, who, after the March 1973 takeover by Stockton, worked for Stockton at Salida as its manager until March of 1974. Simpson is now engaged in a separate business and has no interest in Stockton, but he does purchase materials therefrom, as did Valley. In his present business, he sells basically to former customers of Valley. He testified that Valley, while Stockton was its operator, did business only within a 65-mile radius of Salida, California, unlike Stockton.

(3) Robert Pittman had been plant superintendent at Stockton for 6 years and was a forthright witness. He testified, consistent with previous testimony,

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[3]Except in one narrow category described below.

that Stockton moved machinery to Salida, also in his jurisdiction, after March of 1974. He agreed that the cost of wiring the third plant in Stockton was prohibitive, that the plant was given up and that Stockton decided to use the suitable Salida facility.

(4) Pittman, after March of 1974, has sent Stockton personnel on details to Salida when the work load demanded. He has sent people there on 3 to 4 day details until Salida built up its personnel, and the record so shows. The Salida facility initially had but two or three people, as contrasted with the 60 at Stockton, although this number has since been augmented. He withstood a rigorous cross-examination and named personnel he had sent to Salida during this period who are still in the employ of Stockton.

(5) Normally, according to Patterson, separate payroll records were and are kept at the two installations. But, reflecting on the integration of these operations, is the undisputed fact that a Stockton man on detail to Salida nevertheless punched in at Stockton each morning before going to Salida, some 22 miles distant.

(6) As is manifest, the employing entity has been drastically changed. The retail operation has been abandoned and the customers thereof advised to seek other sources of supply. In fact, Cecil Simpson, with a new buisiness, is now such a source. There is centralized purchasing of products for all installations of Stockton, indeed conducted at Salida. Albeit pursuant to demand from Teamsters, there is one centralized labor relations policy with interchange of personnel

as required among the installations. Simply stated, for legitimate economic reasons, the identity of Valley, now but a corporate shell, has been erased and its facility merged into a much larger wholesale entity. That some of the former personnel in the area were hired does not detract from the foregoing. Would it be preferable to recruit new inexperienced help and ignore former employees who, in a time of recession, manifestly would desire if not urgently need work in their own community?

The Central Counsel has submitted some contrary evidence, partially refuting the foregoing, but it does not withstand scrutiny. Thus, Dale Tramel worked for Valley as an apprentice mill-cabinet worker commencing in August of 1973, was terminated by Valley one or two weeks before the shutdown on March 15, 1974 and was told by Patterson that he did not know if and when the plant would reopen. Tramel conceded however, that work had slowed down considerably between January 15 and the shutdown, this entirely consistent with Respondent's contentions herein.

Tramel was recalled to work around April 1 and Patterson then told him that his rate of pay would be $3.95 rather than $4.05 per hour, as before, and as so far as Patterson knew, "there was no union." His paychecks thereafter issued from Stockton while his previous checks came from Valley. He conceded further that, unlike his days under Valley, Respondent Stockton was now packaging more doors.

Cecil Lentz testified that, late in April, Patterson visited him at his home, stated that he had an opening

at $3.00 per hour and that Lentz would have to join Teamsters. This, of course, was consistent with the claim made upon Stockton by Teamsters. Lentz demurred, but ultimately decided to return to work on August 19. He had received $4.05 per hour while on the Valley payroll and received the same wages upon his return, with his duties basically unchanged. Lentz never joined Teamsters as of the date of this hearing.

Frank Jurado was a journeyman miller for Valley since 1970 and was terminated on March 15, 1974. About three weeks later, he visited President Guy at Stockton and contended that he was owed some vacation pay under the contract between Valley and Carpenters. Guy checked into this and honored the claim. Jurado was offered work at Salida by Stockton in August of 1974 and returned in September at his previous rate of pay. He too has not joined Teamsters. As in other cases, the record reflects that the offer of reinstatement was due to a "suggestion" by the Regional Office of the General Counsel as shown in a letter from Guy to Jurado.

Joe Tuggle testified that he was a pre-hanger for Valley at a rate of $4.05 an hour and was terminated on March 15. He thereafter sought work from Patterson who, some two weeks later, utimately offered to employ him at $3.95 an hour and added that there would be no union. As for the transfer of employees between the Stockton and Salida facilities, Tuggle testified that after his return to work on or about March 28, employees would be detailed therafter to Salida from Stockton on a part-time basis.

In this area, Tramel testified that during the period September 3 and 13, 1974, while he was at Salida, he observed two Stockton personnel at Salida, but contended that they were laying cement and not performing production work. He conceded, however, that there were two buildings at Salida and that he, in one, could not observe what was being done in the other building at all times.

And his earlier testimony does support the position of Respondent Stockton. He was recalled to work on or about April 1. He conceded that Stockton personnel would come to work at Salida "off and on" with the personnel varying. "Normally" two Stockton men would come down if there was an overload of work and these two would come down "most of the time." Tramel admitted that he has seen as many as four Stockton men working at Salida. He also agreed that there might have been other Stockton men in areas he could not observe. The number of help at Salida gradually increased to ten and thereafter assignment of Stockton personnel to Salida became less frequent. Tramel repeated, however, that during April and May of 1974, Stockton personnel would be detailed to Salida "quite a bit."

As for the transfer of machinery, Cecil Lentz claimed that he did not see a new pre-hung door machine at Salida after his return to work. Here, I credit the specific testimony of Pittman as to the transfer of equipment; the latter, an impressive witness in my observation, had a superior recollection.

In view of all of the foregoing considerations, I find that, except as found below, the evidence does not preponderate in favor of the position of the General Counsel and recommend the dismissal of these allegations. See *Nova Services Co.*, 213 WLRB No. 14.

D. *Payment of Initiation Fees*

Dale Tramel and Joe Tuggle, employed at the Salida facility, testified that on or about May 1, 1974, Shop Superintendent William Patterson told them that they were required to join Teamsters. They took Patterson's truck and visited the Teamsters' office in Stockton. According to Tramel, they filled out some forms and were asked for the $100 initiation fee. He demurred, explaining that Patterson had told them that President Guy would pay the fee. Tramel duly became a member of Teamsters, subject to dues deductions, and received a notice that his initiation fee had been paid. He and Tuggle were the only rank-and-file employees at Salida on this date. According to Tuggle, Patterson told the two men that they would have to join Teamsters. Upon visiting the union hall, they signed various forms, Tuggle thereafter paid dues to Teamsters, and his initiation fees was paid by Guy.

Guy candidly admitted that he had paid the initiations fees for these two men and volunteered that he had done likewise in the case of Cecil Lentz some years ago when he entered the employ of Stockton. He testified that an office clerical from Teamsters

telephoned him and advised that Tramel and Tuggle lacked the initiation fee payments. Guy offered to and did pay these as he has done on a number of occasions over the years for others, although his operation was much smaller at the time.

An employer may not intrude himself into the union security operations of a contract, except as permitted by Section 8(a)(3) of the Act. It follows, that, by paying the initiation fees of employees to Teamsters, Respondent has engaged in conduct violative of Section 8(a)(2) of the Act and has interferred with the Section 7 rights of employees protected under Section 8(a)(1) thereof. I further find that, by accepting such initiation fees from an employer, rather than from an employee, Teamsters has restrained or coerced employers in the exercise of their Section 7 rights, within the meaning of Section 8(b)(1)(A) of the Act.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

Conclusions of Law

1. Stockton Door Co., Inc. is an employer within the meaning of Section 2(2) of the Act.

2. Delta-Yosemite District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, and General Teamsters Local No. 439, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, are labor organizations within the meaning of Section 2(5) of the Act.

3. By paying the initiation fees of employees to a labor organization, Respondent-Employer has engaged in unfair labor practices within the meaning of Section 8(a)(2) and (1) of the Act.

4. By accepting initiation fees for members from an employer, Respondent Teamsters has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices effecting commerce within the meaning of Section 2(6) and (7) of the Act.

6. Respondent Stockton and Respondent Teamsters have not otherwise engaged in unfair labor practices within the meaning of the Act.

The Remedy

Having found that Respondents have engaged in unfair labor practices, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the polices of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:[4]

[4]In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

ORDER

Respondent-Employer, Stockton Door Co., Inc., Stockton, California, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Paying the initiation fees of its employees to General Teamsters Local No. 439, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, or any other labor organization.

(b) In any like or related manner interfering with, restraining or coering employees in the exercise of the rights guaranteed under Section 7 of the National Labor Relations Act, except to the extent permitted under Section 8(a)(3) thereof.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Post at its plants at Stockton and Salida, California, copies of the notices attached hereto and marked "Appendix A." Copies of said notice, on forms provided by the Regional Director for Region 20 shall, after being duly signed by Respondent Stockton, be posted by it immediately upon receipt thereof and maintained for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent Stockton to insure that said notices are not altered, defaced or covered by any other material.

(b) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps it has taken to comply herewith.

Respondent Union, General Teamsters Local No. 439, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Stockton, California, its officers, agents, and representatives, shall:

1. Cease and desist from accepting the payment of initiation fees of members from Stockton Door Co., Inc., or any other employer.

2. Take the following affirmative action which is deemed necessary to effectuate the polices of the Act:

(a) Post at its offices, union hall, and at all premises of Stockton, Respondent Stockton willing, copies of the attached notice marked "Appendix B".[5] Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by Respondent Teamsters, shall be posted by it immediately upon receipt thereof and maintained for 60 consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent-Union to insure that said notices are not altered, defaced or covered by any other material.

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[5]In the event the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(b) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps it has taken to comply herewith.

Dated:

/s/ Martin S. Bennett
/s/ Martin S. Bennett
Administrative Law Judge

Appendix A

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT pay the initiation fees of our employees to General Teamsters Local No. 439, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, or to any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in the exercise of the rights guaranteed under Section 7 of the National Labor Relations Act, except to the extent permitted under Section 8(a)(3) thereof.

STOCKTON DOOR CO., INC.
(Employer)

Dated By
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT
BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 13018 Federal Building, Box 36047, 450 Golden Gate Ave., San Francisco.

Calif. 94102, Telephone (415) 556-3197

Appendix B

NOTICE TO MEMBERS

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT accept the payment of initation fees of our members from Stockton Door Co., Inc., or any other employer.

General Teamsters Local No. 439, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America
(Labor Organization)

Dated By
(Representative) (Title)

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BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 13018 Federal Building, Box 36047, 450 Golden Gate Ave., San Francisco,

Calif. 94102, Telephone (415) 556-3197

Appendix 2

United States Court of Appeals
for the Ninth Circuit

No. 75-3181

National Labor Relations Board,
Petitioner,

vs.

Stockton Door Co., Inc.,
Respondent.

[Filed Mar. 31, 1977]

JUDGMENT

Before: ELY and TRASK, Circuit Judges, and ORRICK, District Judge.*

THIS CAUSE was submitted to this Court upon an application of the National Labor Relations Board for the enforcement of a certain order issued by it against Respondent, Stockton Door Co., Inc., Stockton, California, its officers, agents, successors, and assigns on June 30, 1975. From the study of the briefs and transcript of record, and without oral argument, the Court, on December 23, 1976, being fully advised in the premises, handed down its

*Honorable William H. Orrick, Jr., United States District Judge, San Francisco, California, sitting by designation.

opinion granting enforcement of the Board's Order. In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Stockton Door Co., Inc., Stockton, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Contributing assistance or support to General Teamsters Local No. 439, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, (hereinafter called Local 439) or any other labor organization.

(b) Requiring membership in, or the payment of initiation fees, dues, or other money to Local 439, or any other labor organization, except as permitted in Section 8(a)(3) of the National Labor Relations Act (hereinafter called the Act).

(c) Withholding recognition from Delta-Yosemite District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the unit found appropriate at its Salida plant; refusing to bargain with that Union as the representative of the employees in that unit; and making unilateral changes in wages, hours, or other terms and conditions of employment.

(d) In any manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board has found necessary to effectuate the policies of the Act:

(a) Withdraw and withhold recognition from Local 439, as the representative of, and cease applying its collective-bargaining agreement with that Union to, the employees in the unit found appropriate at its Salida plant unless and until Local 439 is certified by the National Labor Relations Board as the representative of the employees in that unit.

(b) Jointly and severally with Local 439 reimburse its current and former employees for any initiation fees, dues, or other money, they may have paid to Local 439, as a result of the unfair labor practices found with interest at the rate of 6 percent per annum.

(c) Make its employees whole for any loss of wages, vacation pay, or other benefits incurred as result of its unfair labor practices in the manner set forth in the section of the Board's Decision entitled "Remedy." (attached hereto as Appendix A).

(d) Make payments to the Delta-Yosemite District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, trust funds for the period after the Salida plant was reopened.

(e) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and

all other records necessary to analyze the amount of backpay, or other money due, under the terms of this Judgment.

(f) Upon request, recognize and bargain with Delta-Yosemite District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, as the exclusive collective-bargaining representative of all production and maintenance employees employed by the Respondent Employer at the former Valley Millwork and Supply Company facility, Salida, California, respecting rates of pay, wages, hours, or other terms and conditions of employment and, if an understanding is reached, embody it, upon request, in a signed agreement.

(g) Post at its plant in Salida, California, copies of the attached notice marked "Appendix B." Copies of said notice, on forms provided by the Regional Director for Region 20, (San Francisco, California) after being duly signed by the Respondent Employer's authorized representative, shall be posted immediately by it upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily placed. Reasonable steps shall be taken by the Respondent Employer to insure that said notices are not altered, defaced, or covered by any other material.

(h) Notify the aforesaid Regional Director, in writing, within 20 days from the date of this Judgment, what steps the Respondent Employer has taken to comply herewith.

With costs in this court in favor of the Petitioner and against the Respondent.

Costs: Reproduction of record .....$ 25.50
Brief of NLRB 93.30
Total $118.80

Endorsed, Judgment filed and Entered.

/s/ Emil E. Melfi
Emil E. Melfi
Clerk

A TRUE COPY
ATTEST: March 31, 1977
Emil E. Melfi
Clerk/

by: Bruce Cutler
Bruce Cutler, Deputy Clerk

SO ORDERED

/s/ Walter Ely,
Walter Ely, Circuit Judge
/s/ Ozell M. Trask,
Ozell M. Trask, Circuit Judge
/s/ William H. Orrick, Jr.,
William H. Orrick, Jr.,
District Judge

Appendix A

Remedy

Having found that the Respondents have engaged in certain unfair labor practices in violation of Section 8(a)(1), (2), (3) and (5), and 8(b)(2) and (1)(A) of the Act, we shall order them to cease and desist therefrom and to take certain affirmative action designed to effectuate the purposes of the Act.

Respondent Employer's violations of Section 8(a)(2) and (3) of the Act require an order that it withdraw and withhold recognition from General Teamsters Local No. 439 as representative of its employees in the unit found appropriate unless and until such time as Local No. 439 is certified by the National Labor Relations Board, and cease giving effect to the agreement entered into with that Union. Similarly the Respondent Union's violations of Section 8(b)(1)(A) and 8(b)(2) require an order that it cease applying the collective-bargaining agreement to the employees in the unit found appropriate herein at the Salida plant, accepting recognition as the representative of the employees in that unit, or entering into and maintaining an agreement with the Respondent Employer requiring membership in the Teamsters, or the payment of initiation fees, dues, or other moneys, by the employees in the said unit, until and unless it is certified by the National Labor Relations Board as the collective-bargaining representative of the employees in that unit. Further, the Respondents will be ordered, jointly and severally, to reimburse any

current or former employees, for any initiation fees, dues, or other moneys, paid by said employees to the Respondent Union as result of the aforesaid unfair labor practices, with interest at 6 percent per annum.

The Respondent Employer's violations of Section 8(a)(5) require an order that it recognize and bargain with Delta-Yosemite District Council of Carpenters and, if an understanding is reached, embody it in a signed agreement; cease making unilateral changes in wages, hours, or other terms and conditions of employment; and make the employees whole for any loss of wages, vacation pay, or other benefits arising from its agreement with the Carpenters, as a result of its unilateral actions in violation of Section 8(a)(5) of the Act. The Respondent Employer will also be ordered to make payments to the Carpenters trust funds for the period after the Salida plant was reopened. Payments to the employees shall be made in accordance with *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), and *F. W. Woolworth Company*, 90 NLRB 289 (1950).

Since the violations denying the employees the right to select their own collective-bargaining representative go to the heart of the Act, we shall issue a broad rather than a narrow order.

Appendix B

NOTICE TO EMPLOYEES

POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT assist or support General Teamsters Local No. 439, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, or any other labor organization.

WE WILL NOT require membership in, or the payment of initiation fees, dues, or other money to, Local 439, or any other labor organization, except as permitted in Section 8(a)(3) of the National Labor Relations Act.

WE WILL NOT withhold recognition from the Delta-Yosemite District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, as the exclusive collective-bargaining representative or our production and maintenance employees employed at our Salida, California, plant; refuse to bargain with the Carpenters Union as representative of that unit; or make unilateral changes in wages, hours, or other terms and conditions of employment of the employees in that unit.

WE WILL NOT in any manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed in Section 7 of the Act.

WE WILL withdraw and withhold recognition from General Teamsters Local No. 439, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, as the representative of our production and maintenance employees at our Salida, California, plant and WE WILL NOT apply our collective-bargaining agreement with Local 439 to those employees unless and until Local 439 is certified as their representative by the National Labor Relations Board.

WE WILL, jointly and severally with Local 439, reimburse our current and former employees at the Salida, California, plant for any initiation fees, dues, or other money they may have paid to Local 439 as a result of the unfair labor practices we have been found to have committed, with interest at the rate of 6 percent per annum.

WE WILL make our employees in the production and maintenance unit at our Salida, California, plant whole for any loss of wages, vacation pay, or other benefits, incurred as a result of the unfair labor practices we have been found to have committed herein, with interest at the rate of 6 percent per annum.

WE WILL make payments to the Delta-Yosemite District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, trust funds for the period after we reopened our Salida, California, plant.

WE WILL, upon request, recognize and bargain with the Delta-Yosemite District Council of Carpenters, United Brotherhood of Carpenters & Joiners of

America, AFL-CIO, as the exclusive collective-bargaining representative of all our production and maintenance employees employed at our Salida, California, plant, respecting wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody it, upon request, in a signed agreement.

Stockton Door Co., Inc.
(Employer)

Dated ..... By .....
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 13018 Federal Building, Box 36047, 450 Golden Gate Avenue, San Francisco, California 94102, Telephone 415-556-3197.

Appendix 3

Van Dyke & Shaw
333 N. San Joaquin Street
Stockton, California 95202
Telephone: 466-7973
Attorneys for Appellant

United States Court of Appeals
for the Ninth Circuit

National Labor Relations Board, Petitioner, vs. Stockton Door Co., Inc., Respondent.	No. 75-3181

NOTICE OF APPEAL

To the Clerk of the United States District Court of Appeals for the Ninth Circuit:

Notice is Hereby Given that Stockton Door Co., Inc., hereby appeals to the Supreme Court of the United States; from the judgment entered in the above entitled matter on December 23, 1976, and from the whole thereof.

Dated: February 18, 1977.

Van Dyke & Shaw,
By James C. Van Dyke
James C. Van Dyke
By James B. Atkinson
James B. Atkinson

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1976

No. 76-1817

STOCKTON DOOR CO., INC.,
Appellant,

vs.

NATIONAL LABOR RELATIONS BOARD,
Appellee.

SUPPLEMENT TO JURISDICTIONAL STATEMENT

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PERNAU-WALSH PRINTING CO. - 562 MISSION STREET - SAN FRANCISCO, CA 94105

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1976

No. 76-1817

STOCKTON DOOR CO., INC.,
Appellant,

vs.

NATIONAL LABOR RELATIONS BOARD,
Appellee.

SUPPLEMENT TO JURISDICTIONAL STATEMENT

United States Court of Appeals
for the Ninth Circuit

No. 75-3181

National Labor Relations Board,
Petitioner,

vs.

Stockton Door Co., Inc.,
Respondent.

[Filed December 23, 1976]

OPINION

Before: ELY and TRASK, Circuit Judges, and ORRICK,*
District Judge.

PER CURIAM:

The petitioning Board, pursuant to 29 U.S.C. § 160(e), has applied for enforcement of its order issued against the Respondent. The Board's Decision and Order is reported at 218 NLRB No. 156.

Reviewing the record as a whole, we find substantial evidence supporting the Board's finding that the Respondent violated section 8(a)(1), (2), (3), and (5) of the Act. The violations by Respondent were (1) its withdrawal of its recognition of the Carpenters Union and refusal to bargain with that Union, (2) its unilateral change of the terms and conditions

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*Honorable William H. Orrick, Jr., United States District Judge, San Francisco, California, sitting by designation.

of employment, and (3) its recognizing and entering into a collective bargaining agreement with the Teamsters Union when the Teamsters did not represent a majority of the Respondent's employees.

ENFORCED.

No. 76-1817

In the Supreme Court of the United States

OCTOBER TERM, 1977

STOCKTON DOOR CO., INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BORD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

JOHN S. IRVING,
General Counsel,

JOHN E. HIGGINS, JR.,
Deputy General Counsel,

CARL L. TAYLOR,
Associate General Counsel,

NORTON J. COME,
Deputy Associate General Counsel,

LINDA SHER,
Assistant General Counsel,

CORINNA L. METCALF,
Attorney,
National Labor Relations Board,
Washington, D.C. 20570.

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-1817

STOCKTON DOOR CO., INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals is not reported (Supp. J.S. 1-2). The decision and order of the National Labor Relations Board (J.S. App. 1-45) are reported at 218 NLRB 1053.

JURISDICTION

The judgment of the court of appeals was entered on March 31, 1977 (J.S. App. 46-55). A document styled a "Jurisdictional Statement" was filed on June 21, 1977.[1] The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

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[1]The Company's "Jurisdictional Statement" should be treated as a petition for a writ of certiorari. 28 U.S.C. 2103.

QUESTION PRESENTED

Whether the Board properly found that the successor employer's bargaining obligation to the union representing the predecessor employer's employees was not extinguished when the successor employer closed the predecessor employer's plant and reopened it ten days later without making any meaningful change in the operation of that plant or in its employee complement.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended, 61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*, are as follows:

> Section 8. (a) It shall be an unfair labor practice for an employer—
>
> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;
>
> (2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it * * *
>
> (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *
>
> * * * * *
>
> (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

STATEMENT

Petitioner ("Stockton") is a manufacturer and wholesaler of blank doors, with facilities in Stockton, California. Its employees are represented by Local No. 439, International Brotherhood of Teamsters ("Teamsters") (J.S. App. 26, 28). In March 1973, Stockton purchased all the stock of a financially troubled customer, Valley Millwork and Supply Company ("Valley"), a manufacturer and retailer of pre-hung doors in Salida, California (J.S. App. 3, 27).[2] Stockton retained Valley's corporate form and name, and continued to operate it as a retail outlet (J.S. App. 3, 27). Valley's employees were represented by Delta-Yosemite District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO ("Carpenters"), and their current collective agreement was effective until June 30, 1974 (J.S. App. 28). After acquiring Valley, Stockton recognized the Carpenters as the employees' bargaining representative and assumed Valley's collective bargaining agreement (J.S. App. 7).

On March 15, 1974, based on advice that Valley could not be operated profitably, Stockton closed it down and terminated its employees, with the intention of moving the operation to one of Stockton's facilities in Stockton, California (J.S. App. 27, 31). On March 21, Stockton notified the Carpenters that Valley had gone out of business and that "as we are no longer operating Valley Millwork, Inc., there is no reason to negotiate a new contract" (J.S. App. 3-4). The intended move did not prove feasible, however, and, on March 25, 1974, Stockton reopened the Valley plant, not as Valley Millwork and Supply Company, but as a part of Stockton Door Company. The reopened facility was operated as a wholesaler of knocked-

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[2]The takeover was prompted by Valley's financial difficulties. Stockton was Valley's largest creditor, and at a creditor's meeting purchased all of Valley's stock and settled the claims of the other creditors. Stockton's officers and directors became Valley's officers and directors, but Valley's employees, plant, and equipment were retained, and the same product was manufactured (J.S. App. 3, 27).

down doors[3] (J.S. App. 4). Stockton rehired the former shop superintendent and two of the three former employees, and utilized the same equipment (J.S. App. 4, 6). Thereafter, on April 1, the Carpenters wrote to Stockton, noting that the Valley plant was still in operation and advising that it still represented the employees and that the bargaining agreement was still in effect (J.S. App. 29).

In the meantime, during March 1974, Stockton President Guy initiated discussions with the Teamsters[4] regarding the Valley facility. In April, Guy informed the Teamsters of the Carpenters' claim to represent the Valley employees, whereupon the Teamsters informed Guy that their contract required that the Valley operation be incorporated thereunder (J.S. App. 30). Guy agreed to apply the Teamsters' contract to the Valley employees. Thereafter the employees, having been told by their supervisor that they had to join the Teamsters, applied for membership and began paying dues to the Teamsters; Stockton paid their initiation fees (J.S. App. 30-31, 38).

The Board found, *inter alia*, that Stockton violated Section 8(a)(5) of the Act by withdrawing recognition from the Carpenters and repudiating that union's collective agreement. The Board further found that Stockton further violated Section 8(a)(2) and (3) of the Act by recog-

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[3]In pre-hung units, which Valley largely sold before the shutdown, the jambs are nailed on the doors; that operation is not performed on knocked-down units (J.S. App. 4).

[4]The contract between the Teamsters and Stockton contained a union security clause, purported to apply to all plants operated by Stockton in the future, and was effective through May 30, 1975 (J.S. App. 28).

nizing the Teamsters and applying its contract to the Valley employees (J.S. App. 9).[5]

The Board explained (J.S. App. 7-8):

> When Stockton acquired Valley in March 1973 and continued to operate it without change in the same industry, with the same industry, with the same employees, it became Valley's successor. *National Labor Relations Board* v. *Burns International Security Services, Inc.*, 406 U.S. 272 (1972). As Valley's successor, it was required to recognize and bargain with the incumbent collective-bargaining representative of the employees in the production and maintenance unit * * *.
>
> * * * * *
>
> Stockton Door, as the new owner, was not required to assume its predecessor's contract; nonetheless, it did assume the contract, considered it binding, so advised the Carpenters, and gave the contract full force and effect until March 15, 1974, when Valley closed. Once Stockton by its actions assumed the contract, it was bound by it thereafter. [Citation omitted.]

The Board further found that the changes made by Stockton, after the reopening in March 1974, provided no lawful reason for abrogating its contract with the Carpenters and recognizing the Teamsters. The Board stated (J.S. App. 6):

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[5]The Board also found that Stockton unlawfully paid the Valley employees' Teamsters initiation fees (J.S. App. 4) and that the Teamsters violated Sections 8(b)(2) and (1)(A) of the Act by accepting recognition and entering into a contract with a union security clause when it did not represent a majority of the affected employees (J.S. App. 9). No issue involving these findings is presented here.

> * * * there was no meaningful change in the operation of the plant after the Valley identification was abandoned. That Stockton operates as a wholesaler is a detail in the mode of distribution that has had little or no effect on the work of the employees in the production and maintenance unit. Employees no longer nail jambs together, but that can hardly be considered material. These changes do not warrant withdrawal of recognition from the incumbent collective-bargaining representative.

The court of appeals, in a *per curiam* opinion, upheld the Board's decision and enforced its order (Supp. J.S. 1-2).

ARGUMENT

Petitioner does not contest the Board's findings that, prior to the closing of the Valley plant on March 15, 1974, Stockton succeeded to Valley's bargaining obligation to the Carpenters Union, and further assumed Valley's contract obligation to that Union. Petitioner contends, however, that those obligations terminated when it closed the Valley plant and then reopened it, because the Valley operation was abandoned and it was replaced by a different operation (J.S. 8-9). But the Board found that there was no meaningful change in the operation of the Valley plant or in its employee complement (J.S. App. 5-6). Accordingly, the only question presented is whether there is substantial evidence to support the Board's finding. Such an issue does not warrant further review. See *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 490-491.[6]

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[6]The cases cited by petitioner (Pet. 8-9) are inapposite. With one exception, they involve the question whether the employer had a discriminatory motive in making business changes or discharging employees during union organizing compaigns. And in *National Labor Relations Board* v. *Brown-Dunkin Co.*, 287 F. 2d 17, 20 (C.A. 10), the court upheld the Board's conclusion that the employer violated the Act by not bargaining with the union concerning the employer's decision to contract out the work of the bargaining unit.

In any event, the court of appeals correctly concluded that there was adequate evidentiary support for the Board's finding. As shown above (pp.), although Stockton may have intended to discontinue operations when it closed the Valley plant, it did not in fact do so. Instead, it reopened the plant ten days later and continued to operate the same equipment, with the same employees performing essentially the same tasks under the same supervision.

Moreover, neither the abandonment of the Valley corporate shell, nor the change from retail to wholesale distribution of the product assembled at the Salida plant, had any significant effect on the employees' working conditions. The only effect it had on those conditions was to eliminate the nailing of door jambs, which the Board properly concluded was not a material change (J.S. App. 6). Finally it is immaterial that Stockton may have believed that it was bound to apply the Teamsters' contract to its Salida operation. Cf. *International Ladies' Garment Workers Union* v. *National Labor Relations Board*, 366 U.S. 731, 738-740.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

JOHN S. IRVING,
General Counsel,

JOHN E. HIGGINS, JR.,
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National Labor Relations Board.

AUGUST 1977.

DOJ-1977-08